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No. 671.

OCTOBER TERM, 1924.

IN THE

Supreme Court of the United States

CORONADO COAL COMPANY, et al., Plaintiffs in Error,

vs.

UNITED MINE WORKERS OF AMERICA, et al.,
Defendants in Error.

IN ERROR TO THE CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT, NO. 6541.

REPLY TO BRIEF OF DEFENDANTS IN ERROR.

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At the beginning of their brief defendants quote from the opinions of Judge Pollock and Judge Kenyon where they stated that in their view it was a sufficient explanation of the conspiracy that defendants did not want plaintiffs' mines to work "non-union."

There are several answers to this suggestion.

The first is the positive testimony showing that the primary consideration in the minds of the defendants was to prevent plantiffs' coal going to the interstate markets. There is also the circumstance of the attempted intimidation of the railroad repair gang, the destruction of the loaded coal cars after all the non-union

men had left the property, and the coincidence of each of the four attacks with plaintiffs' readiness to ship coal, all of which are consistent only with a specific purpose to prevent the *shipment* of coal.

Judge Pollock suggests that if plaintiffs had agreed to confine their sales to Arkansas, defendants would still have destroyed the property. It is submitted that the jury would have been justified in finding otherwise, in view of defendants' policy not seriously to interfere with small mines, having a purely local business, particularly as it appeared (1409) that plaintiffs could not have operated on their local business alone. The jury might properly find that, in the event suggested, defendants would merely have waited, as they did when plaintiffs were pumping the water, for plaintiffs thus to exhaust their finances.

Furthermore, under the statement of this Court in Swift *vs.* U. S., 196 U. S. 375, 397, quoted on page 61 of our brief, a conspiracy is not legalized under the Anti-Trust Act because it has as its object the interference with intrastate commerce as well as interstate. All the trust cases included all such commerce in their purpose.

Finally, it is really no explanation of defendants' motive to say that they did not want the mines to run "non-union," without considering, as did this Court on the prior writ of error, why it was that the Union men did not want this to happen.

The mere name "non-union" or "open shop," by itself means nothing. An open shop mine or non-union employees are not hateful *per se.* Any objections to them must be the result of something which the objectors fear that they have done or can do to harm them.

It is necessary to go farther, as did this Court, and to decide why it is that the non-union men or the Independents are feared or hated. Clearly, under the

testimony in the present record, it was for the jury to decide whether this was by reason of the menace to the markets of their quasi-partners, the Union operators, or resulted from the alleged attacks of the guards as defendants sought to show by their testimony, or from the local causes suggested by this Court.

Throughout their brief defendants in error continually refer to our argument in this Court on the prior writ of error, and endeavor to lead the Court now to believe that because we then contended that the testimony in that record sustained our case, it in some way follows that the testimony in the two records is "substantially the same."

Upon the first trial we produced what evidence we were then able to procure, most of it being circumstantial. We then believed and of course we argued to this Court that such evidence was sufficient to sustain our judgment. This Court determined otherwise on the facts in the record then before it. Now, however, upon the present record we have been able to produce direct testimony as to the matters on which this Court held our prior circumstantial testimony insufficient.

On the former writ of error we argued that the facts then before the Court were sufficient to show an intent to restrain commerce and participation by the National. Defendants' present position is that because this Court has held such argument untenable, it follows that our similar argument, based on the new record containing material additional facts, must likewise be held untenable. To state this position is to answer it.

It was obviously impossible for this Court, in its prior opinion, to pass on the legal effect of the new testimony in the present record which was not then before it.

A party who has once tried and failed to prove a fact circumstantially is not precluded, on a new trial, from proving the same fact either circumstantially or by direct evidence. This is precisely what this Court so

clearly stated in Slocum *vs.* Insurance Co., 228 U. S. 364, 380, quoted at page 12 of our principal brief.

The sole question now before the Court is as to the sufficiency of the testimony in the present record for submission to the jury. We do not therefore consider it necessary to point out how, by taking isolated statements from their context, our former position has in many instances been misstated in the brief for defendants in error.

On page 8 of defendants' argument, they quote Section 37 of the Judicial Code, authorizing the District Court to dismiss a suit whenever it shall appear to the satisfaction of the Court that it does not really and substantially involve a dispute or controversy properly within its jurisdiction. They then argue that this provision gives the District Court power to assume the function of the jury and to pass on the weight of the evidence whenever the basis of the suit is the violation of a Federal Statute.

The jurisdiction of the District Court to entertain the present suit is found in 36 St. at L. 1091-3:—

> "SECTION 24. The District Courts shall have original jurisdiction as follows:—* * * Twenty-third: Of all suits and proceedings arising under any law to protect trade and commerce against restraints and monopolies."

Defendants confuse the jurisdiction and power of the Federal Court to hear a case, with the subsequent question as to whether plaintiff has made out such a case by sufficient testimony for submission to the jury.

Kardo Company *vs.* Adams, 231 Fed. 950, 954-5.

Precisely the same question has frequently arisen on the similar provision allowing direct appeals to this Court where the "jurisdiction" of the District Court is involved.

Binderup *vs.* Pathé Exchange, 263 U. S. 291, 305;
Smith *vs.* Apple, 264 U. S. 274.

On the prior writ of error in this case defendants successfully maintained the point that the record did not contain sufficient testimony to establish a case under the Sherman Act. In spite of this defendants took their case up through the Circuit Court of Appeals, instead of direct to this Court, relying on the decisions which hold that the question of jurisdiction referred to in the Statute involves merely the right of the Federal Court to hear the case and not whether the case alleged is sustained by the testimony.

The question which, in Gilbert *vs.* David, 235 U. S. 561 (cited by defendants on page 9 of their brief) the Court said the trial Judge might have been justified in deciding, was as to the district residence of plaintiff.

Defendants quote the following passage from this Court's opinion as holding that a Labor Union is not liable like a corporation, for the acts of its agents, or of subordinate branches created by it, in carrying on its business and policy:—

> "But it is said that the District was doing the work of the International and carrying out its policies and this circumstance makes the former an agent. We cannot agree to this in the face of the specific stipulation between them that *in such a case* [italics ours] unless the International expressly assumed responsibility, the District must meet it alone."

The "case" that this Court was then considering was one in which it did not appear that the District was carrying on the business or policy of the National body, but was engaged in a purely private and local controversy with which the National was only remotely concerned. "In such a case," the Court says, the Constitution does not make the District the agency of the National.

This Court did not, it is submitted, in any way modify the decisions as to the liability of a principal for the

acts of his agent done in the course of his business. A passage in the opinion preceding that quoted makes this entirely clear:—

> "A corporation is responsible for the wrongs committed by its agents in the course of its business, and this principle is enforced against the contention that torts are *ultra vires* of the corporation. But it must be shown that it is in the business of the corporation. Surely no stricter rule can be enforced against an unincorporated organization like this."

By the above statement this Court meant, it is submitted, that in so far as the liability of the associate funds is concerned, the same rules of law are to be applied as those which govern business corporations. The entire reasoning of the Court, based on the necessity of placing responsibility on those having greater power for harm, leads to this conclusion.

On page 14 of their brief, defendants state that in the first record there was evidence "from which the jury could have found White's approval of the occurrences at Prairie Creek." This Court expressly held otherwise. White's speech to the Executive Board on May 4th referred not to the destruction of the properties on July 17, but merely to the intimidation of the men on April 6th.

Again on pages 15-16 of their brief defendants tend to confuse the issue. The evidence as to the General Policy of the National body to protect Union Operators against open shop competition was similar in the two records, but was fortified by much additional proof in the new record as to the adoption of such policy in the Southwest, and as to the putting of it in effect by unlawful means for the purpose of increasing the price of coal in the interstate markets.

The evidence as to the function and duty of the Districts, as parts of the Main Body, to carry out such

policy by preventing the Union mines in their respective Districts from turning open shop, was new in the present record, as was the testimony that the particular people who destroyed our property were acting pursuant to such General Policy.

Defendants' reiterated and vain attempts to discredit McNamara and their references to White as a "man of reputable character, honored not only by his fellow workers but by his government" merely emphasize the conflict of testimony between McNamara and White which it was for the jury to resolve. We welcome a decision by a jury as to which of them is telling the truth, particularly in view of defendants' failure to call Stewart to corroborate White's denial and of White's extravagant statement that he affirmatively remembered that during the entire week of May 18-23 at the District 21 Convention at Fort Smith, he had never once mentioned to any of his associates the Bache-Denman open shop operation (2122), which the Union was then endeavoring to suppress in the same County where the Convention was being held.

On pages 32-3 defendants endeavor to show a contradiction in McNamara's testimony relative to White's promise of compensation to him and Slankard. A fair reading of McNamara's testimony is the best answer to this. By the passage italicized on page 33 McNamara was referring to the time of the second meeting in 1916 and this in no way implied a modification of his previous statement as to White's promise in May, 1914. If there were any conflict it would be for the jury to resolve.

Defendants rely on the fact that the evidence shows the fines and counsel fees of the District Officers and members to have been paid by the checks of the District. This fact, however, is merely one of the facts to be considered by the jury in support of defendants' con-

tention. The jury might properly find that the reason the records of the National did not show that it paid these fines and expenses was that the present suit had already been started.

Until the second trial plaintiffs had no direct evidence to implicate the National, while the District, whose officers were indicted, had been caught red-handed. The necessary expense before the destruction of the property was negligible, a few hundred dollars for rifles and ammunition, and railroad fares for a few willing workers to keep prospective employees away from the mines. It was after the institution of the present suit that the considerable expenditures occurred.

It is absurd to suppose that after White's caution in May to keep the National out of sight, it would have volunteered to put itself on record as to liability for a matter as to which it was being sued in the Federal Court, particularly as it was then very short of funds, District 21 having advanced it $75,000 to help in Colorado (Rec., p. 1956), District 12 $250,000, and the other Districts unspecified sums (Rec., 1957). In the last analysis all the associate funds belonged to the National since by the Constitution they could be used only for its purposes and since it could at any time forfeit the "charter" of the District and absorb the District funds into the National treasury (see our principal brief, pp. 65-6).

On page 33 of their brief defendants argue that the effect of White's statement to McNamara of his desire to keep the National body behind the scenes in some way tends to exempt it from liability.

Their contention appears to be that, while the new testimony may show the *"prior initiation"* of the attack which this Court found lacking in the former record, the same testimony shows that White was particularly anxious not to have the National Body *appear* as an

active participant in the affair. *Ergo,* they contend, the National cannot be held liable.

This is indeed a novel doctrine in the law of agency. One who instigates the commission of a tort is not the less liable as a principal because he is *undisclosed,* or because his participation is purposely concealed.

Certainly the National body, through its President could not thus "interfere" (as this Court said)—White could not thus inject his power, authority and prestige as National President to produce the designed consequences necessary to his organization, and at the same time relieve it from liability for such consequences, and throw such liability on some one else.

Yet this, as the jury might properly have found from the testimony, was precisely what White tried to do.

His desire was to have the National in the conspiracy for *results,* but out of it for *responsibility.*

Such has been the idea of conspirators since conspiracy began.

A large part of the plan of the schemers is usually directed towards evading responsibility for the unlawful means employed.

The fallacy of defendants' argument on this point is made apparent by a paraphrase of White's directions:—

> "The interest of our Union requires the destruction of Bache's mines and I, as your President, therefore order you to bring this about, but I want the participation of the National Organization to be kept secret, so that no blame may attach to it."

In the passage from McNamara's testimony relied on by defendants in the above connection, he stated that at the close of White's conversation the latter had said: "You boys have taken care of this so far yourselves, now *it is up to you.*"

It is instructive to compare this with White's own testimony a few days later:—

"Q. As National President, an open shop mine mining 5000 tons of coal, right next to a Union mine, would not interest you a bit? A. No, sir, *that would be up* to the District of that jurisdiction * * *."

White had already told them that, in order to protect the Union operators against plaintiffs' open shop competition, when plaintiffs got ready to hoist coal *"then it was time to act."*

He then reminded them, that, as a functioning part of the Union of which he was President, it was *up to them,* up to the District Branch, to prevent plaintiffs' coal getting into the Union market.

On pages 36-43 of their brief defendants discuss our contention that the publication by the Executive Board of the Editorial "The Truth about Hartford," constituted, in view of the new testimony, both an active participation and a ratification by the Board. Again defendants seek to confuse our argument on the prior record with the testimony therein. While we then argued that White must have known the falsity of the excuse as to the attacks of the guards, we were unable to prove it, as we did at the second trial. On the first record we depended for our proof on inferences which this Court held to be unjustified. Here we have shown by the statement of White's co-conspirator, Stewart, which Stewart did not take the stand to deny, that White himself "arranged the plan" for plaintiffs' destruction.

The extract from the minutes of the Executive Board relative to the interim powers of the National President, found on pages 2215-6 of the record, was primarily important, not for the action of the Board, but for the discussion among the members, from which the jury might properly find that, according to established practice, the Board construed the Constitution as giving the President the full powers of the Board between Board meetings. The Board's actual conclusion was

that, in view of this practice, no authority of the Board was required to authorize the President to grant the financial assistance for which Board Member Haggerty was asking for West Virginia, and Haggerty consequently withdrew his appeal.

Compare Fairfield *vs.* County, 100 U. S. 47, 52, 54 as to the practice of this Court in reversing its prior construction of a State Constitution (Concord *vs.* Portsmouth Bank (92 U. S. 625), on being advised of a contrary construction by the State Court.

Again, on pages 47 *et seq.*, of their brief, defendants attempt to confuse our former argument with the testimony in the first record.

It is not our contention that there was no strike at Prairie Creek, but that it was put in force, not by order of the District Officers, but automatically by the provision of the *National Constitution* forbidding the members to work in any mine where non-union men were employed.

In this defendants apparently are in agreement with us, since on pages 48-9 they themselves quote the provisions of the Constitution and also Board Member McLachlan's testimony that no strike order was necessary to call out the men.

In connection with defendants' discussion of the Hitchman case on page 51 of their brief, they overlook the fact that Hughes was a mere National Organizer, who by the Constitution is appointed by and is under the direction of the President. No action by the Board appeared to have been taken. Could a mere agent appointed by the President have greater powers than the President who appointed him?

In their discussion of the rejected offers on page 56, defendants make the contention that where a trial Judge rejects testimony on objection by defendants,

plaintiffs may not rely on such testimony to reverse a judgment on a directed verdict which the presence of the rejected testimony would have rendered improper.

The question in the case at bar relates not to the admissibility of testimony under the rules of evidence, but to its materiality as a question of substantive law, to complete the cause of action alleged. It is therefore immaterial whether the Court pass on the materiality of the testimony separately or in connection with the directed verdict. In the one case the Court will hold the rejection to have been error provided the inclusion of the rejected testimony in the record would have rendered the directed verdict improper; in the other, the Court will pass on the propriety of the directed verdict on the assumption that the testimony had been admitted. In either case a new trial will result provided the plaintiffs' proof, including the rejected testimony, was sufficient to sustain the cause of action alleged. In no event may a litigant, at any stage of a case, secure an advantage based on the absence from the record of competent testimony improperly excluded on his objection, provided his opponent has duly saved his rights by proper exception.

The soundness of defendants' reasoning may be tested by the case where the trial Court rejects all plaintiffs' testimony and then directs a verdict for defendants. Certainly in such a case plaintiff may properly assign the directed verdict as error, in spite of the fact that to do so necessarily assumes the inclusion of the rejected testimony.

Plaintiffs did not, as defendants state on page 57, urge on the prior record that the Prairie Creek strike was a "sporadic event." They have consistently urged that it was not, but this Court held that the testimony in the original record did not support their contention. The passage quoted by defendants from our principal

brief did not purport to be a summary of our former argument, but of this Court's view of the testimony in the first record.

In the second trial plaintiffs produced new testimony which, it is submitted, fully warrants their contention that the Prairie Creek strike was neither a local nor a sporadic event, but was the direct outcome of the one relentless and never ceasing Policy of the National and all its District and Local Branches.

The rejected testimony and offers of proof relative to the nation-wide conspiracy and attempted monopoly raised the question so clearly and so fully and in so many aspects that it would appear unnecessary to burden the Court with a discussion of defendants' meticulous criticism of certain of them.

Long before the offers were completed Judge Pollock observed (1852):—

> "THE COURT:—Haven't you laid all the foundation that will be necessary? If the ruling of the Court is erroneous you have the question saved, beyond a doubt."

In connection with defendants' argument as to proof of intent to restrain interstate commerce, they again seek to persuade the Court that because we contended that the former testimony warranted an inference of such an intent, the present direct testimony is "merely cumulative." This Court expressly held, however, that the inference which we then sought to draw was not supported by the testimony, so that there was nothing on this branch of the case on which we might cumulate.

In the discussion of the potentiality of plaintiffs' product in interstate commerce, it must not be forgotten that the quesion is whether defendants feared the menace of our competition, and the important point

is not what our mines had produced in the past, but what they were capable of producing if permitted to operate open shop. This the uncontradicted testimony in the present record showed to be 8000 tons per day or 2,000,000 tons in 250 days, the latter being a conservative estimate of the possible working days in the year in view of the testimony that a cut in plaintiffs' price of but 25 cents per ton would have enabled plaintiffs to sell "all the coal they could have produced before their competitors sold any" (1431).

On page 78 defendants state that this Court's estimate of the potential production of plaintiffs' mines at 5000 tons *per week* "was a fair statement of the former record" and then proceed to quote Mr. Bache's testimony from the former record showing the aggregate capacity of five of the mines under union conditions as 4950 tons *per day.* (Denman's testimony made it 5150 tons per day.)

The testimony in the former record did not, as defendants state on page 82, refer to plaintiffs' capacity as an open shop operation, but to the capacity of five of the mines operating under the restrictive conditions imposed by the Union.

Defendants scoff at the inclusion by plaintiffs in the aggregate of their potential tonnage, of the Hoffman mine, which though leased during 1914, plaintiffs would have got back on January 1, 1915, and also of their Kali-Inla mine in Eastern Oklahoma. That defendants considered all of these mines as part of plaintiffs' operating group, clearly appears from the article in the Mine Workers' Journal which appeared in the issue immediately following the Riot of April 6th (546):—

> "The Company [Bache-Denman] has announced its determination to inaugurate the 'open shop' policy at its six mines in Western Arkansas and Eastern Oklahoma next fall. At present they are closed for the summer."

The six mines thus referred to were Coronado, Mammoth Vein No. 1, Mammoth Vein No. 6, Dallas, and Hoffman in Western Arkansas, and Kali-Inla in Eastern Oklahoma. Prairie Creek No. 4 was the mine whose open shop attempt the article described.

On page 89 defendants mis-state the testimony of Mr. McAuliffe as to the saving from open shop operation, and endeavor to make it appear that Mr. Bache's estimate of 50 to 75 cents was higher than that of the other witnesses. Mr. McAuliffe's total figure was not 25 to 40 cents as stated by defendants, but 50 to 80 cents (Record, p. 1360-61, quoted in bold faced type on p. 84a of Appendix A of our brief).

Mr. Bache did not, as defendants state on page 89 "dictate" the contents of the letter in which Cameron estimated the saving in operating cost alone (not including any additional saving in overhead) at 55.8 cents per ton. "He [Cameron] did not write it at my dictation" (1500). It is true that the same letter appeared in the former record; so also did the testimony that Mr. Bache did *not* dictate it ("Did you dictate it? A. No, sir"; former record, p. 1025). The above testimony has repeatedly been called to defendant's attention since the same statement was made in the former oral argument in this Court.

Defendants' argument on page 92 implies that, at the present stage of the case, the Court may assume that Mr. Bache improperly "broke" his contract and that "irritating guards" were employed at the mines on July 17. The testimony in the present record is that the contract with the Operators' Association (which was the only contract to which plaintiffs were a party) had been secured by bribery and had been so frequently broken by defendants as to be voidable by plaintiffs; also that the

only "guards" whom plaintiffs had employed had left on April 6th and from then on only miners were employed who took turns in guarding the property.

Defendants' statement on page 110 that "Bache still admits that he breached his contract" is in flat contradiction of the record, as defendants have frequently been advised throughout this litigation.

On pages 93 and 94 defendants imply that the evidence as to the location of the burned cars was shown by the same testimony as in the former record, whereas a reference to the pages of the Record cited by us on page 73a of Appendix A to our brief will show otherwise, and fully justify the statements in our principal brief.

In defendants' discussion of the circumstances relied on by plaintiffs as showing an intent to restrain commerce and competition, they avoid any reference to the fact that McNamara and the other local leaders were not plaintiffs' former employees, but the employees of Central Coal & Coke Company, and plaintiffs' other immediate competitors, whose Union markets it was the primary purpose of the conspirators to protect.

In their summary on pages 96-98 of McNamara's testimony, as bearing on specific intent, defendants omit all reference to White's direction that when plaintiffs began *to hoist* coal then it was *time to act,* and to McNamara's statement that they did act when this contingency occurred.

Defendants argue the impossibility of White's having "arranged the plan" for plaintiffs' destruction from McNamara's statement that, by in meetings on April 5th he arranged for "what we intended later on," and that two or three days before April 6th McNamara had "realized in the very near future we were going over to do what we did." What McNamara was

then talking about was merely the intimidation of the men on April 6th with which White had nothing to do, and not with the destruction of the property and the camouflage as to the attacks of the "guards," which was what White and Stewart planned in Kansas City between April 10th and 15th.

Defendants emphasize the fact (p. 98 of their brief) that the "plan" arranged by Presidents White and Stewart was to "prevent Bache from producing coal." White's later statement to McNamara shows clearly that their purpose and object in preventing production was to preclude the shipment of plaintiffs' coal to and its competition in the interstate markets of the Union operators, which brings the case precisely within this Court's statement that obstruction to coal mining constitutes a restraint of commerce within the prohibition of the Sherman Act where "the obstruction to mining is *intended* to restrain commerce in it [coal]," (259 U. S., p. 410) or where it is "part of the plan to hinder, restrain or monopolize interstate commerce" [*id.*, p. 408].

In their summary of the testimony of the local witnesses (pp. 98-102) defendants omit many of the most significant passages and quote a good deal of innocuous introduction to the statements on which we rely. For instance, they do not refer to the conversation among the members of the District Executive Board overheard by Dr. Routh.

In the passage from Judge Kenyon's opinion quoted by defendants on page 102 it is apparent that the Court overlooked the significant feature in Tharel's testimony, which was not that defendants talked of plaintiffs' foreign markets, but that they talked *of their own fear of allowing plaintiffs coal to go there* and of their determination to prevent this in order to protect their relations with the Union operators.

In connection with the case of Penna. Sugar Co. *vs.* American Sugar Co., 166 Fed. 254, it is noteworthy that there was in that case apparently no direct evidence that the purpose of acquiring and closing down the Pennsylvania plant was to protect the American from its competition, this being inferred from its acquisition by a competitor. Such an inference of a purpose to restrain competition was also drawn from the closing by the Tobacco Company of the competing plants lawfully acquired by it.

U. S. American Tobacco Co., 221 U. S. 165-6, 183.

Defendants do not complete the parallel between the Pennsylvania Sugar case and the case at bar. To do so they must assume that *the employees* of the American Company *destroyed* the plant of the Pennsylvania Company, by unlawful violence, and murdered its employees, for the purpose of keeping the sugar there manufactured from competing with and taking the markets of their employer, the American Company, and thus throwing them out of work.

This feature in the case at bar is shown both by direct testimony and by declarations of the parties as well as circumstances referred to in our brief, including the fact that the most active conspirators were either the employees of plaintiffs' principal competitors or were their allies in preserving the Union markets from open shop competition, the District officers having repeatedly agreed with the Union operators to afford them this protection. (1786, 334, 336; quoted at pp. 23a, 30a and 31a of Appendix A to our principal brief.)

In the discussion of the decisions at the close of their brief, defendants, like Judge Pollock, apparently rest their case on the proposition that, since coal mining is not itself interstate commerce and since the mere intent by the producer to ship does not make it so, the destruction of a mine cannot be actionable under

the Anti-Trust Act, even though effected for the specific purpose of restraining interstate competition and commerce, and as a step in a conspiracy to produce this unlawful result. This Court clearly disposed of defendant's contention in the passages in its former opinion quoted by us on pages 15-16 of our principal brief.

As we have pointed out in our principal brief, defendants attempt to confuse the purpose of the coal operator to ship to other States, which does not make his mining business interstate commerce, with the purpose of defendants—the conspirators—to prevent such shipments by striking at the source. It is the latter intent which gives color to the destruction of the mines and makes it actionable under this Federal Law.

This consideration distinguishes the cases cited by defendants at the end of their brief, including United Leather Workers *vs.* Herkert, 265 U. S. 454, in which this Court said:—

> "The record is entirely without evidence or circumstances to show that the defendants, in their conspiracy to deprive the complainants of their workers, were thus directing their scheme against interstate commerce."

Other confusing statements in defendants' brief are believed to be apparent, in the light of the testimony in the case, quoted by us in our principal brief and in the Appendices thereto. We do not therefore deem it necessary to burden the Court with a further detailed comment.

Respectfully submitted,

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